

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DeShawn Evans and  
Benita Evans,

Plaintiffs,

v.

Case No. 12-12794

United States of America,

Honorable Sean F. Cox  
United States District Court Judge

Defendant.

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**ORDER DENYING**  
**DEFENDANT'S MOTION FOR RECONSIDERATION**

Plaintiffs filed this action against the United States of America, claiming that Customs and Border Patrol Agent Justin McCormack caused a car accident in which Plaintiffs were injured. The matter came before the Court on Defendant's Motion for Summary Judgment. In an Opinion & Order issued on November 27, 2013, this Court denied Defendant's motion in its entirety. (Docket Entry No. 47).

On December 11, 2013, Defendant filed a Motion for Reconsideration, wherein it asks this Court to reconsider its November 27, 2013 Opinion & Order.

Local Rule 7.1 of the Local Rules of the Eastern District of Michigan governs motions for reconsideration and provides that a motion for reconsideration must be filed within fourteen days after entry of the judgment or order at issue. Eastern District of Michigan Local Civil Rule

7.1(h)(1).<sup>1</sup> The Rule further provides:

(3) **Grounds.** Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

Eastern District of Michigan Local Civil Rule 7.1(h)(3).

Having reviewed the substance of the motion, this Court DENIES Defendant's Motion for Reconsideration, as this Court finds that both of Defendant's arguments contained therein are without merit.

First, Defendant argues that the Court erred in relying on McCormack's testimony in support of its finding that a genuine issue of material fact exists regarding Defendant's rate of speed at the time of the accident.

Second, Defendant argues that this Court erred in finding that a genuine issue for trial exists regarding Defendant's "sudden emergency" defense, due to fact that Defendant's expert Dr. James Sprague testified that there is "no relationship between a vehicle's speed and its ability to prevent sliding on black ice." (Defs.' Mo. For Reconsideration at 6, *citing* Sprague Declaration at ¶ 6). In challenging this Court's ruling, Defendant argues that "there is no evidence that defendant created his own sudden emergency." (Def.'s Mo. For Reconsideration at 6).

This Court finds that Defendant has not demonstrated that any palpable defects exist in the Court's Opinion and Order on Defendant's motion for summary judgment. Defendant's motion

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<sup>1</sup>The Local Rules further provide that no response to a motion for reconsideration and no oral argument are permitted unless the Court orders otherwise. Local Civil Rule 7.1(h)(2).

repeats arguments that have already been presented to, and rejected by, the Court. Furthermore, as to the testimony of Dr. James Sprague, this Court believes that, in light of all of the evidence presented, his proffered testimony merely reinforces this Court's conclusion that a question of fact exists for trial regarding the applicability of the sudden emergency doctrine. *See Boutros v. Canton Regional Transit Authority*, 997 F.2d 198, 202 (6th Cir. 1993) (stating that “[a]ll credibility questions must be considered most favorably to the nonmoving party, and their resolution left to the jury.”). Having reviewed Defendant's renewed arguments, the Court declines to reconsider its ruling.

Accordingly, IT IS ORDERED that Defendant's Motion for Reconsideration (Docket Entry No. 50) is DENIED.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: January 27, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 27, 2014, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager